

ORDINANCE NO. \_\_\_\_\_

1           AN ORDINANCE amending Section 27.82.110 of the Lincoln Municipal Code to  
2   adopt a new method by which the reimbursement of arterial street impact fees, for qualifying  
3   economic development projects, shall only be made in conformance with a specific policy statement  
4   adopted by resolution of the City Council, rather than by a vote of at least five City Council  
5   members; and repealing Section 27.82.110 of the Lincoln Municipal Code as hitherto existing.

6           BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

7           Section 1. That Section 27.82.110 of the Lincoln Municipal Code be amended to read  
8   as follows:

9   **27.82.110    Miscellaneous Provisions.**

10          (a)    Interest. Interest earned on monies in any impact fee account shall be considered part  
11   of such account, and shall be subject to the same restrictions on use applicable to the impact fees  
12   deposited in such account.

13          (b)    First-In/First-Out Accounting. Monies in each impact fee account shall be considered  
14   to be spent in the order collected, on a first-in/first-out basis.

15          (c)    No Operation or Maintenance. No monies from any impact fee account shall be spent  
16   for periodic or routine operation or maintenance of any facility of any type.

17          (d)    No Restriction on Development Conditions. Nothing in this ordinance shall restrict  
18   the City from requiring a person to construct reasonable project improvements required to serve such  
19   person's project, whether or not such improvements are of a type for which reimbursements are  
20   available under Section 27.82.090.

21          (e)    Records. The Impact Fee Administrator shall maintain accurate records of the impact  
22   fees paid, including the name and address of the person paying such fees, the project for which the  
23   fees were paid, the date of payment of each fee, the amounts received in payment for each fee, and  
24   any other matters that the Impact Fee Administrator deems appropriate or necessary to the accurate

1 accounting of such fees, and such records shall be available for review by the public during City  
2 business hours.

3 (f) Assignment of Impact Fee Account Monies. The approved Capital Improvement  
4 Program which includes any Impact Fee Facilities scheduled for construction shall assign monies  
5 to fund in whole or in part such Impact Fee Facilities from the Impact Fee Fund Account of the type  
6 for which the fees in that account were paid. Any monies, including any accrued interest, not  
7 assigned to specific projects within such capital improvements program and not expended pursuant  
8 to Section 27.82.080 (Refunds) or 27.82.090 (Reimbursements) shall be retained in the same impact  
9 fee account until the next fiscal year.

10 (g) Mistake or Misrepresentation. If an impact fee has been calculated and paid based  
11 on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by a person shall  
12 be refunded by the City to such person within thirty days after the City's acceptance of the  
13 recalculated amount, with interest since the date of such overpayment at the rate earned by the City  
14 on the funds. Any amounts underpaid by such person shall be paid to the City within thirty days  
15 after the Impact Fee Administrator's acceptance of the recalculated amount, with interest since the  
16 date of such underpayment at the rate then earned by the City on its impact fee funds. In the case  
17 of an underpayment to the City, the City may refuse to issue any additional permits or approvals for  
18 the project for which the impact fee was previously underpaid until such underpayment is corrected,  
19 and if amounts owed to the City are not paid within such thirty-day period, the City may also repeal  
20 any permits issued in reliance on the previous payment of such impact fee and refund such fee to the  
21 then current owner of the land.

22 (h) ~~Discretion to Reduce~~ Reimbursement of Impact Fees to Promote Economic  
23 Development. In order to promote the economic development of the City, ~~or the public health,~~  
24 ~~safety, and general welfare of its residents, the City Council by an affirmative vote of at least five~~  
25 ~~of its members may agree to pay~~ the City shall reimburse a developer for some or all of the arterial  
26 street impact fees imposed on a proposed development or redevelopment from other funds of the  
27 City that are not restricted to other uses. ~~Any such decision to pay impact fees on behalf of a~~

1 ~~proposed development shall be at the discretion of the City Council and shall be made pursuant to~~  
2 ~~goals and objectives adopted by the City Council to promote such development.~~ Notwithstanding  
3 the above, no such reimbursement of arterial street impact fees shall be made except in conformance  
4 with specific economic development criteria and qualifications adopted by resolution of the City  
5 Council which, if met, entitle a developer to a reimbursement of some or all of the arterial street  
6 impact fees imposed on the development.

7 (i) Appeals. Any determination made by any official of the City charged with the  
8 administration of any part of this ordinance may be appealed by the aggrieved party to the City  
9 Council by filing (1) a written Notice of Appeal on a form provided by the City, and (2) a written  
10 explanation of why the appellant feels that a determination was in error. Appeals must be filed with  
11 the City Clerk within ten days after the determination for which the appeal is being filed. At the  
12 regular meeting following the filing of the appeal, the City Council shall fix a time and place for  
13 hearing the appeal, and the City Clerk shall mail notice of the hearing to the appellant at the address  
14 given in the Notice of Appeal. The hearing shall be conducted at the time and place stated in such  
15 notice given by the City Council. In an appeal of an impact fee, the Council shall not waive the fees,  
16 although the fees may be reduced pursuant to subsection (h) above or may be reduced upon a finding  
17 that the impact fee was incorrectly calculated, or that unusual circumstances of the development  
18 demonstrate that application of the fee to the development would be unfair or unjust. The City  
19 Council shall make specific and detailed findings of fact with respect to each controverted issue on  
20 appeal. The determination of the City Council shall be final.

21 (j) Periodic Review. The impact fees and the administrative procedures established by  
22 this ordinance shall be reviewed at least once every three fiscal years to ensure that:

- 23 (1) The demand and cost assumptions underlying such fees are still valid,  
24 (2) The resulting fees do not exceed the actual cost of constructing Impact Fee  
25 Facilities of the type for which the fee was paid and that are required to serve new development,  
26 (3) The monies collected or to be collected in each impact fee fund have been or  
27 are expected to be spent for Impact Fee Facilities of the type for which such fees were paid, and

1 (4) That such Impact Fee Facilities will benefit those developments for which the  
2 fees were paid.

3 (k) Adjustments for Inflation. Beginning on January 1, 2005, and on January 1 of each  
4 following year unless and until the impact fee schedules are otherwise revised or replaced by City  
5 Council, each fee amount set forth in each schedule shall be adjusted to reflect the effects of inflation  
6 on those costs set forth in the Impact Fee Study by multiplying such amount by a fraction, the  
7 numerator of which is the U.S. Consumer Price Index for All Items for the most recent month of  
8 August, and the denominator of which is U.S. Consumer Price Index for All Items for the period one  
9 year prior to the period reflected in the numerator.

10 (l) Violations. Violation of this ordinance shall be a misdemeanor and shall be subject  
11 to those remedies provided in Section 27.81.070. Knowingly furnishing false information to any  
12 official of the City charged with the administration of this ordinance on any matter relating to the  
13 administration of this ordinance, including without limitation to knowingly furnishing false  
14 information regarding the expected size, use, or traffic impacts from a proposed development, shall  
15 be a violation of this ordinance. In addition to or in lieu of any criminal prosecution, the City or any  
16 person applying for a permit of the types described in Section 27.82.050(a) or any person seeking  
17 to engage in a development for which no permit is requested shall have the right to sue in civil court  
18 to enforce the provisions of this ordinance.

19 Section 2. That Section 27.82.110 of the Lincoln Municipal Code as hitherto existing  
20 be and the same is hereby repealed.

21 Section 3. That this ordinance shall take effect and be in force from and after its  
22 passage and publication according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_\_ day of \_\_\_\_\_, 2004:

\_\_\_\_\_  
Mayor